PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
May 21, 2007
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Board members in attendance were Theresa Blazicevich, Greg Cross, Adele Michels, Steve Michels, and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:01 a.m.

Approval of Minutes

Ms. Michels moved to accept the minutes of the April 2, 2007 Board meeting. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Dispute of Eligibility – Mary Hightower Property, Silver Gate, Facility #56-14109, Rel. #4274

Mr. Wadsworth stated that the Board staff applied the law at the time the release occurred. Ms. Hightower originally tried to apply the law in effect at the time eligibility application was filed. The matter was tabled because another matter was before a hearing examiner on the issue of what law applied to eligibility determination: the law in effect at the time the release was discovered, or the law in effect at the time of application for eligibility. Ms. Hightower's attorney filed an *amicus curiae* brief in that hearing. The hearing examiner and the district court both agreed with the Board's approach of applying the law in effect at the time the release was discovered.

Based on information in their Fund application, the Hightowers knew there were tanks on the property when they purchased it in August 1985. In 1988, the national UST regulations required either upgrading or removing USTs within a ten year window. By 1989, 40 CFR 280.3 required notification of the tanks to the Solid and Hazardous Waste Bureau of Montana DPHHS (predecessor to DEQ) unless it was known that the tanks had been removed from the ground. In April 2003, the Park County Environmental Council notified DEQ of the possibility that there may have been tanks still on the property. DEQ notified the Hightowers that there may have been tanks at the site that were not properly closed. DEQ visited the site in June 2003 and photographed the dispenser island, piping, vent piping and possible tank locations. The Hightowers obtained a removal permit in August 2003 and removed six tanks in September 2003, when the release was discovered. Ms. Hightower applied for eligibility for the release in March, 2005. The staff recommended denial of eligibility because the tanks were not properly closed in place. Therefore, the tanks were not in compliance at the time the release was discovered

Lee Bruner, attorney for Ms. Hightower, addressed the Board, noting that Ms. Hightower is an elderly widow who lives in Texas. She and her husband bought the property in August 1985 and did nothing with it after purchase. After DEQ notified her that tanks may still exist in 2003, she hired a consultant, secured a permit to remove two tanks and had them removed, along with four other tanks that were discovered. The release was discovered under tank #4. He noted that the release is fairly minor, with less than $20,000 expended on remediation, so far. The tanks and contaminated soil have been removed. Most of the remediation is likely complete.

Mr. Bruner noted that the three arguments made by the Board staff to deny eligibility are that the tanks: (1) were not compliant with spill and overfill prevention and corrosion protection requirements, (2) were not compliant with release prevention and detection requirements, and (3) were not compliant with testing, monitoring and recordkeeping requirements for spill and overfill prevention, and release prevention and detection requirements. He disagrees that those are the rules that apply. He contends that, because the tanks were closed in place prior to 1989, the applicable rule, effective November 23, 1989, is ARM 17.56.704 which addresses tanks taken out of service prior to November 1989. He argued that the rule does not require the owner/operator to perform any work on a permanently closed system unless specifically directed to do so by the Department. The Department did not require any work be done until 2003, and Mrs. Hightower promptly did what was asked. He contended that the previous owner had complied with pre-2003 eligibility closure requirements. He believes the only applicable rule was the Uniform Fire Code. The 1982 Code, at §79.113(e), required that tanks out of service for longer than one year should be removed from the ground or abandoned in place and filled with an inert material. The Code was sporadically and unevenly enforced, and each Fire Chief applied the rules as he saw fit. It is not clear what the Fire Chief in Silver Gate required.

Mr. Bruner discussed several releases that were determined eligible where the tanks were abandoned but not filled with inert material. In addition, he contends that filling with an inert material does not prevent or mitigate a release, it only provides structural stability to the tank. He provided a statement from Rich Levandowski, former Deputy Fire Marshall, supporting that belief.

Ms. Blazicevich recalled that there was a good deal of outreach done, with literature available from several sources, to notify owners of old gas station sites that old tanks needed to be closed or removed. She noted there had been a legal opinion by a DEQ attorney that said that tanks did not have to be filled with sand to be properly closed, but that is inconsistent with the fire codes. Mr. Levandowski has said they had trouble with the fire departments enforcing the code. But the code did say the tank had to be filled as directed by the chief. The code was available, and just because it wasn't enforced, she does not believe that people can use that to say they don't have to comply with the law.

Mr. Wadsworth stated that he has been in contact with the current Fire Marshall, Allen Lorenz, about proper closure. Mr. Lorenz stated that the recommendation was to fill tanks and close them properly if they were notified of their existence. It is not clear that the owner properly notified the Fire Marshall. In addition, as soon as DEQ was notified about the existence of the tanks in 2003, DEQ directed Mrs. Hightower to remove them. It is important to note that notification of the existence of the tank to DEQ (or the Fire Marshal) was not delivered by the owner, as required by law, but rather it was a third party that informed the regulatory agency. There was no proactive approach to closing the tanks, either from the prior owner, or from the Hightowers. The fact that the tanks were not filled with sand is only one issue. The vent pipes and fill pipes were still attached, and other components of the system were still there. The system was not properly closed, nor was it operated properly for an active system. Federal law required, under 40 CFR 280.3, that the owner/operator submit notice of the existence of tanks before May 8, 1986. The Hightowers did not provide such notice.

Mr. Bruner argued that there was intent to abandon the tanks because some of the pipes had been removed, the tanks were emptied, the dispensers were removed and the lot covered with gravel. Other sites have been determined eligible in similar circumstances.

Mr. Johnson stated to the Board that the tank in question was not an eligible tank. First the owner was required to provide notice of the existence of the tank. After that, the tank system was required to meet the release and detection and performance requirements established in the 1989 rules or be closed in accordance with DEQ rules. The closure rules required either that the tank be removed, or emptied of all product and filled with an inert substance. This tank did not comply with either one of those rules, or with the notice requirements in the first instance. ARM 17.56.704 does not apply in this case because that rule presumes that the owner/operator has already provided notice to the Department of the existence of the tank. The idea behind filling the tank with inert substance is not only to provide structural integrity, but to render the tanks unfit for storing any kind of petroleum product if the tank will be left in place. The tank was not properly closed, notice was not given and it was out of compliance when the release was discovered, and it is therefore ineligible.

Mr. Bruner asked for supporting documentation for the reason for filling the tank with sand.

Mr. Johnson cited a policy memo, dated March 1, 2001, from David Scrimm, former Bureau Chief, stating that the overarching concern is that the tank be rendered incapable of future use as an underground storage tank. This can be accomplished by filling the tank with inert material, but is not accomplished by merely emptying the tank or removing the dispensers, partially filling the tank or lines with inert material, or holes in the tank.

Mr. Bruner disputed Mr. Scrimm's opinion. He provided a memorandum, dated April 27, 1998, stating a legal opinion by Marty Tuttle, former attorney for DEQ.

Mr. Johnson stated that Mr. Tuttle's memo has been discredited by EPA and DEQ, and superseded by Mr. Scrimm's opinion.

Mr. Noble noted that the Board must apply the law in effect at the time the release was discovered. When this release first came before the Board, that procedure was disputed. He asked Mr. Johnson to provide an explanation of how the ruling in the Town Pump Dillon case relates to the current matter.

Mr. Johnson noted that, to determine eligibility, the Board applies the statutes and rules in effect at the time the release was discovered. In the Town Pump Dillon case, the release was discovered just prior to the effective date of the 2003 legislative changes to the Board's statute. Town Pump argued that the applicable law should be that in effect at the time the application for eligibility is filed, which in that case was after the effective date of the 2003 statute. A similar argument was made for the Hightower release. Because the Town Pump case was already before a hearing examiner, the

Board allowed Mrs. Hightower to file an *amicus curiae* brief. The hearing examiner supported the Board's position. Town Pump appealed that decision to the district court. The court recently ruled in favor of the Board.

Ms. Blazicevich moved to support the staff recommendation to deny this release eligibility. Mr. Michels seconded. **The motion was unanimously approved.**

Claim Adjustments – Pop Inn, Townsend, Fac #04-07127, Rel. #2768 and 3940

Mr. Wadsworth corrected a typographical error on the summary provided to the Board in this matter. The first line of the sixth paragraph should read, "The Department of Environmental Quality has prepared a memo to the file. . . ".

In this matter, the property owner was in the process of selling the property to the tank operator. During that process the operator received an administrative order (AO) on May 10, 2006, for failure to obtain a compliance inspection, maintain and operate corrosion protection equipment, empty a noncompliant UST system and pay required fees. In a separate proceeding, the Internal Revenue Service (IRS) took control of the property from the owner shortly after the AO was issued. Because the IRS controlled the property, the operator was not allowed onto the facility and could not address the violations cited in the AO. The power was turned off, shutting down the corrosion protection with product still in the tanks. Broadwater County and the City of Townsend became aware of the AO and possible consequences to Fund eligibility and worked with DEQ and the IRS to mitigate environmental hazards. DEQ entered the property and emptied the tanks on October 11, 2006. The IRS is preparing to auction the property, and would like to have a determination by the Board with regards to the percentage of reimbursement available from the Fund as a result of the AO.

The Department prepared a memo to the file on May 7, 2007 stating that the operators could not correct the violations and satisfy the AO because they no longer had access to the property. The memo was intended as closure of the AO with respect to the facility. The time period from issuance of the AO to the date of the memo to the file is greater than 180 days, resulting in a reimbursement of 0%. The time period from issuance of the AO to the date the tanks were emptied of product results in a reimbursement of 25%. The staff is asking the Board to make a determination of how it wishes to treat reimbursement at this site, in light of the intended sale and given the inability of the operator to address the violations because of circumstances beyond their control.

The proceeds of the property sale will go towards back taxes. There are two releases at the site, which will be cleaned up simultaneously. The case manager estimates the cleanup will be approximately $350,000. It is a concern that the value of the property is less than the cost to clean up the contamination. However, once the Board makes its determination on reimbursement percentage, the ultimate cost to the purchaser of the property is not the concern of the Board.

There was discussion of various options for reimbursement percentages, the total amount of Fund liability at various percentages as a result of the multiple releases, and motion language.

Mr. Noble moved that all currently unapproved and future claims for release numbers 2768 and 3940 be reimbursed at the rate of 10% of the allowed claim, provided that the new owner of the property applies to DEQ within 30 days of the transfer of ownership for closure permit under §75-11-212 and closes the tank in accordance with the permit before the permit expires. He elected 10% reimbursement, because there are three releases at the site, with two already eligible for the fund, and therefore the owner could potentially be eligible for up to $3 Million in reimbursement. Given that there is some value to the property, and that cleanup costs are estimated at $350,000, a 10% reimbursement will allow the new owner to receive up to $300,000 from the Fund. Ms. Michels seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility
From March 21, 2007 thru May 21, 2007

Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Fairfield	Mountain View COOP	50-03596	4385, 1/5/2005	Eligible – 4/11/07
Great Falls	Bill's SOCO	07-06614	2472, 12/2/1994	Eligible – 4/11/07
Billings	Baker Transfer and Storage Co	99-95044	4558, 2/22/07	Eligible- 4/11/07
Great Falls	Former Moore's Mobile Station	07-12966	4555, 2/22/07	Eligible – 4/12/07
St Ignatius	Allards General Store	24-05769	4488, 12/18/06	Eligible – 4/23/07
Hamilton	Banner Residence	99-95042	4550, 2/16/07	Eligible – 4/26/07
Lewistown	Former Sinclair Retail	14-03287	4543, 1/16/07	Eligible – 5/2/07
Hamilton	Donaldson Bros Ready Mix Inc	41-03103	4247, 6/4/2001	Eligible – 5/8/07
Billings	Lockwood Interstate Exxon	56-05074	4416, 2/4/2005	Eligible – 5/8/07

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. There are recommendations for nine sites to be eligible (see table below).

Ms Blazicevich moved to ratify the staff recommendations. Mr. Noble seconded. **The motion was unanimously approved.**

Claims over $25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than $25,000 reviewed since the last Board meeting. (See table below). There are four claims totaling $236,594.08, with adjustments totaling $68,052.50. He noted that, once the Board makes a determination on these claims, they will be placed in line to be paid, based on their final review date.

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments
Shepherd	Kautz's Stop & Shop	56-06949	20070309G	$61,440.10	
Bozeman	Former Gallatin Farmers Coop	16-13701	20070315A	$34,914.99	$8,974.90
Great Falls	Holiday Stationstore 267	07-08065	20070423J	$51,600.24	$5,894.35
Great Falls	On Your Way Inc	07-09699	20070430L	$88,638.75	$53,183.25
Total				**$236,594.08**	**$68,052.50**

Ms. Michels moved to accept the claims. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of April 4, 2007 through May 9, 2007. (See table below). There were 177 claims, totaling $1,050,520.04. He pointed out that the claims greater than $25,000 that were approved at the February board meeting are beginning to appear in the weekly reimbursement figures. This is a result of the revised procedure for handling payments due to the Fund balance difficulties. He also pointed out four zero reimbursement claims that will be ratified, as well. These were claims denied because of an administrative order that was not satisfied until after 180 days, resulting in 0% reimbursement. He anticipates that this matter will be appealed at a future meeting.

WEEKLY CLAIM REIMBURSEMENTS May 21, 2007 BOARD MEETING		
Week of	**Number of Claims**	**Funds Reimbursed**
April 4, 2007	117	$311,507.52
April 11. 2007	17	$524,822.93
May 9, 2007	43	$214,189.59
Total	**177**	**$1,050,520.04**

Presiding Officer Cross asked how far out reimbursements are at this time. Mr. Wadsworth indicated payments were being made within 90 days of final review. The owners, operators and consultants have been notified of the current payment situation, and the staff is beginning to receive telephone calls concerning the matter. Some contractors are beginning to delay work.

Mr. Noble moved to ratify the weekly claim reimbursements. Ms. Michels seconded. Ms. Blazicevich abstained from claims for North Star Aviation. **The motion was approved.**

The meeting was recessed from 11:33 a.m. through 11:49 a.m.

Evaluation of Dig-outs

John Arrigo, Acting Bureau Chief of the Hazardous Waste Cleanup Bureau, addressed the Board. There had been a request for DEQ to report on the status of long-term monitoring sites. He noted that DEQ's database is not at the stage

where they can easily do a search to identify such sites, so there is no report at this time. He is going to work on database changes that will make such reporting easier.

He noted that he and PRS are trying to give the Board information to schedule work so that the Board can know the claims that are coming in advance, and can better manage the fund. It is not the Department's job to prioritize work at sites or do such scheduling for the Board. However, it is the Department's job to characterize the risks, the impacts, and the importance of a particular site cleanup over another, and provide that information to the Board, so that if the Board chooses to schedule work so it knows it can make reimbursements, the Board has some additional information to base that decision on. He provided a table that shows sites that are planned for source removals (dig-outs). Such excavations are common and usually expensive. The table included 39 sites divided into four groups based on the the relative risk of the contamination and proposed excavation date. The categorizations were based on the opinions of the project managers for the sites. Some level of preliminary investigation must be done to determine if excavation is the remedy of choice. There are other types of sites that may take priority over excavations, such as releases that may impact public water supply or otherwise create a significant hazard to human health. He hopes to be able to provide information characterizing those type of sites, as well.

Presiding Officer Cross noted that the cost of the work plans listed as requiring immediate attention is greater than $1.2 Million. In addition, there are several other sites with work plans already approved and in process to complete in 2007 that do not show a projected cost. He expressed strong concern that the Fund is not capable of handling all those costs unless some of the excavations are postponed.

Mr. Arrigo stated that if the Board wants to tailor its approvals of work plans to some time frame, there is an opportunity to do so on the sites awaiting work plan approval. He also said that the Board could adjust the PRS table schedule any way it wants. For instance, the Board could modify or retract some of its existing approvals. The Department can decide if it is willing to accept the risk of leaving some contamination in the soil, but that would result in more long-term monitoring. More work can be done to quantify the size of the excavation before work begins, or perhpas set a limit on number of yards of contaminated soil that will be removed.

Presiding Officer Cross commented that the Board will be developing legislation to increase the fee at the next legislature. Mr. Arrigo asked that the Department be involved in that process.

Jeff Kuhn, Petroleum Release Section Manager, provided a slide presentation on three sites that have been excavated. The PRS group approves the technical requirements on site cleanup work plans. He noted that DEQ does have some control on how work plans are scheduled and the type of work that is requested of the consultants. A good way to approach the issue of source removal is to try to schedule the excavations so they don't result in a large number of large claims occurring all at the same time. In some cases excavation is the only alternative to get a site cleaned up in an expeditious manner, so that long term costs are reduced. The benefits of source removal include rapid cleanup, prevention of contaminant spreading, immediate improvement to soil and groundwater conditions, prevent contamination of PVC water lines, removal of long-term liability, decrease time to closure, decrease long-term remediation costs. Contractors may excavate up to 100 cubic yards of soil during a tank removal. After that, they must call DEQ and get further direction.

Earl Griffith, Tetra Tech, addressed the Board. He described a contamination excavation he recently completed, and noted that Mr. Kuhn is correct that there are some sites for which excavation is the only cost effective option, even though it may be expensive. This was a site he had been working on for a number of years. He emphasized that all parties were involved in making the decision about how to approach the site. Excavation was not done on the site earlier because the site was an operating station and the owner did not want to remove the tanks.

Mr. Wadsworth reminded the Board that the goal is for DEQ to help figure out how to balance the fund. He noted that Mr. Arrigo indicated the Department will provide the Board with information, and Mr. Kuhn talked about staggering excavations using planning. It was also said that excavation is almost always warranted. However, Mr. Wadsworth's point is that the information provided here is important for (1) management of the fund, and (2) proposed legislation in 2009. Perhaps some of the cost for the excavations should be borne by the owner/operator, which could be addressed with legislation in 2009. He showed the Board a graph depicting two years of work plan review and approval activity as compared to available funds. The graph clearly showed that significantly more work plan costs were approved every month than the dollars available to make payments. It is clear that the requirement contained in the 2003 Legislative Audit Report, to control costs, is not being addressed. He pointed out that the report states fund solvency is dependent upon the correlation between revenues and expenditures, and the graph clearly shows work plan expenditures approved have been significantly higher than revenues for at least the past two years. The report notes that loans are intended to address short-term cash flow difficulties, but have been used to address long-term fund solvency issues. This is not a cost effective tool for that purpose.

More work plans have been generated than the Fund has money to pay for. In an effort to find a way to reverse that trend, Mr. Wadsworth evaluated the work flow of the Department and the Board staff. The Department requests and receives a work plan, performs a technical review of the plan, and provides a draft approval letter. The Board staff performs a cost review of the plan and provides notice of what costs are reasonable. There are a few places where the work flow can be controlled or changed that may correct that problem. Currently, the staff controls the process after the claims are received. Payments are made on completed claims as money comes into the Fund. An alternative would be to delay the cost review and approval until money is available to pay the costs of the work plan, thus keeping the consultants from beginning the work and from incurring the costs. He feels that the best place to control the work flow is with the Department's work plan requests. The Board budget allows approximately $4.5 Million for claims in one year. Excavation work plans have currently been requested for greater than $12 Million, in fiscal year 2007 alone. He proposed controlling the work flow at the work plan request stage, so that work plans are not requested unless the Fund has the cash to pay for them.

Sandi Olsen, Remediation Division Administrator noted that a work plan request is not generated until there is a release. There is an average of 50 new releases per year. The release triggers the cleanup requirements. The Department has certain statutory deadlines to address contamination. In order to stop the process, the statute will need to be changed. She believes the chart Mr. Wadsworth used leaves out key elements in the process.

Mr. Arrigo told the Board that if there is a release the Department must respond to it to determine if there are significant threats from the release. He suggests the control to the work flow should be at the Board's review of the reasonable costs. After the work plan is requested and approved by the Department, a judgment can be made on when it can be implemented. Mr. Wadsworth is trying to put the burden on the Department to control the Board's claims, and that is not the Department's job. In addition, from an enforcement point of view, the Director does not want enforcement to force a cleanup on an owner/operator that he cannot afford, or for which a consultant will not be reimbursed for. It is important to get the technical information and approval first.

Ms. Blazicevich indicated there is no point in reviewing costs if the money is not available and the work plan cannot be implemented until later. Perhaps the staff could send a letter indicated that the work planned is reasonable but there is not money at this time.

Mr. Wadsworth noted that if the consultant has approval from the Department for a work plan, they can begin the work whenever they want, regardless of whether the Board staff has reviewed the costs. Board staff review is not statutorily mandated. Reasonable and necessary costs incurred after approval by the Department must be paid by the Board.

Dennis Franks, consultant, noted that because of the delays in payment that are beginning to occur, he is notifying his subcontractors to build the cost of delay of payment into their bids. He anticipates a 20% to 30% increase in costs as a result. He advocates that the Fund borrow money.

Mr. Griffith is upset because the consultants are currently put in the middle. He also advocated borrowing the money to implement a temporary fix. Insurance companies will not do business in Montana, because the site closure criteria are so difficult to meet. Its water quality laws are some of the toughest in the nation.

Mr. Wadsworth stated that in order not to exceed available funds, at some point it must be decided that some sites do not pose a serious risk to health and the environment, and requests for work can be delayed until money is available. As has been shown by the Corrective Action Plan Cost Estimate Review report in the Board Staff Report section of the Board's packets for the past year, the Fund does not have enough revenue to pay for the corrective action that is being approved by the Department. A short term answer would be to take the cash reserve down from $500,000 to zero, but the Fund will no longer be able to pay for an emergency response, should it be necessary to do so. He advocates using an environmental risk priority to determine whether work needs to be done on a site at the present time.

Ms. Olsen indicated that the Department has been trying to get to that point, though not as directly or quickly as Mr. Wadsworth would like. The Department has been shifting work to emphasize closure, shifting work to get to closure sooner (i.e., digging sites out), reducing staff, carrying vacancies longer, gone to short term shifts and using EPA grants to secure more funding, moving sites into long-term monitoring and inactive status. These efforts have not solved the problem. There are two kinds of work plans, investigations and corrective actions. Without the investigations, the Department will not have the information required to assess risk. She noted the Department is committed to working with the Board to reach a long-term solution, but there is a short term problem.

Presiding Officer Cross indicated that the Board would likely vote to borrow money to take care of the backlog of claims, if there was some assurance that future claims would be in line with available revenue in the future. He asked for a motion to put into process the necessary paperwork to get the letter of credit into place.

Ms. Michels moved to direct the executive director to investigate whether the Board of Investments line of credit that recently expired can be reinstated. Concurrently, the executive director is directed to begin the application process for a Board of Investments loan under ARM 17.56.225(a). The goal is to have the loan or letter of credit available, reserving the right to draw the money as needed. **The motion was unanimously approved.**

Presiding Officer Cross also asked that the staff explore methods to reduce the claims that come in by reducing the number of work plans that are requested or approved.

Mr. Wadsworth noted that there are at least two ways to achieve the desired result. The staff can set a dollar limit on the plans that will be approved in any month, based on a first in-first out method. Alternatively, the site priority can be used to address higher priority sites first, with lower priority sites addressed later, when additional funds are available..

Mr. Kuhn stated that he has asked the PRS staff to review the priority ranking of all sites, as some of them appear to be incorrect. They should make sure they are working on the highest priority sites. Mr. Arrigo noted that the Department will work with the staff to consider risk, cost effectiveness of work and scheduling work so there are not large unexpected claims. Mr. Livers indicated he hopes the Department and Board staff will be able to come to a mutually agreeable way to try to control the flow at the front end of the process by the next Board meeting. In addition, the Department will work with the Board to develop legislative proposals for the next legislative cycle. There are four Board meetings before proposals must be submitted to the Governor's Office.

Mr. Wadsworth informed the Board that the staff has begun reviewing work plan costs based on a budget of $350,000 per month, on a first in-first out basis (FIFO). He recommended using site priority rather than FIFO. If the Board agrees, he will change the process to a site priority system. The priority designation comes from the Department.

Mr. Kuhn does not recommend using the priority ranking as a fiscal priority ranking system. It was not designed to be used in that manner. At this point the ranking is handled by to many different people. The Department is revising its priority system at this time.

Mr. Wadsworth noted that the 2003 Legislative Audit Report recommended development of a priority system to assist the Board in balancing the fund. If that is not the priority system that is currently in use, it needs to be changed to achieve that purpose.

He also asked the Board's guidance on using the cash balance in the fund to pay claims before fiscal year end in order to reduce the amount of accruals. At the February meeting, the Board voted to reduce the cash balance to $500,000 with the understanding that if it did not received from the staff and DEQ a priority system plan that the Board can review and approve to address the work plan cost situation, the balance would be increased to $1 Million again. The Board did not receive such a plan at this meeting.

After discussion, the Board determined to leave the fund balance at $500,000.

Fiscal Report

Mr. Wadsworth pointed out the fiscal report and the projected fund balance. He noted that the 1997 loan will be paid off in August. He also noted that the subrogation case that has been appealed to the Supreme Court on the 7 year ruling has been moved from a May 2007 hearing to December 2007. Subrogation settlements are stalled until that case has been heard by the court.

Board Attorney Report

Mr. Johnson informed the Board that the Allen Oil MAPA proceeding has been dismissed without prejudice. The Castner MAPA proceeding has also been dismissed. The Town Pump's brief in the Dillon Town Pump case is due on June 1, with the Board's brief due a month later.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	MAPA Proceeding Dismissed
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	MAPA Proceeding Dismissed
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently Insurance coverage
Dillon	Town Pump #1	01-08695 Release #4144	Eligibility – contested 03/07/05	Supreme Court brief due 6/1/07.
Great Falls	On Your Way	07-09699 Release #3633	Adjustment to future claims	**Hearing requested 2/15/07 Awaiting identification of attorney**
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	**Hearing requested 2/15/07 Awaiting identification of attorney**
Whitefish	Don Gray	15-04428 Release #1034	Adjustment to future claims	**Hearing requested 2/15/07 Awaiting identification of attorney**

Board Staff Report

Mr. Wadsworth noted that the May figure for the value of claims received in the Board staff report is for a partial month. In the month of April, $836,000 worth of claims were paid, owing to the decrease in the cash balance to $500,000.

Petroleum Release Section Report

Mr. Arrigo noted that 33 sites have been evaluated for closure through May 16, 2007. 23 of them were approved for closure, with 19 actually closed.

Kirsten Bower, DEQ attorney, updated the Board on the Department's development of a new rule on how a release is defined and a release number is assigned. The rule will formally adopt the procedure the Department has operated under since 1989. DEQ has been conferring with the Board staff on the rule. Upon confirmation of a release, a release number is assigned and all contamination discovered during investigation or corrective action on that release will be incorporated in the one release. There are three exceptions to that rule. The rule also includes definitions of facility, and petroleum storage tank. In addition, there is a process for rescinding a release number, if necessary. The Department wants to file the rule for public comment in mid-June.

Public Forum

Presiding Officer Cross commented that as a result of the current financial difficulties, consultants will begin to look at what projects they will work on, and the priority of the site will become important to the decision making.

Dennis Franks suggested securing the authority to pay for large claims on a payment schedule, rather than in one lump sum.

The next scheduled Board meeting is July 23, 2007, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, MT.

Meeting adjourned at 2:48 p.m.

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Greg Cross - Presiding Officer